

SERVICE DATE - AUGUST 8, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42057

PUBLIC SERVICE COMPANY OF COLORADO D/B/A XCEL ENERGY
v.
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: August 7, 2003

In this case, the Public Service Company of Colorado d/b/a Xcel Energy (Xcel) challenges the reasonableness of rates charged by The Burlington Northern and Santa Fe Railway Company (BNSF) for movements of coal from origins in the Powder River Basin of Wyoming to Xcel's Pawnee Steam Electric Generating Station near Brush, CO. The parties filed their opening evidence on January 10, 2003; reply evidence on April 4, 2003; and rebuttal evidence on May 19, 2003.

On May 28, 2003, Xcel filed a petition for the simultaneous filing of closing briefs.¹ BNSF concurred in a reply filed on June 11, 2003. The parties differ on an appropriate page limit for the briefs.²

In complex cases such as this one, the Board has generally found that briefs, properly employed, can focus the issues and thereby contribute to greater efficiency in analyzing the record. Specifically, a single round of simultaneous briefs will, without further delaying the proceeding, allow each party to set forth its position on key issues in light of the full record, and identify issues that have been narrowed or are no longer in dispute. Accordingly, by this decision, Xcel's motion to permit the filing of briefs will be granted. The parties are reminded that new evidence is not permitted in briefs and will be subject to motions to strike and other sanctions. The briefs shall be filed no later than 30 days after the service date of this decision and shall not exceed 40 pages. A 40-page limitation is appropriate here given the following additional information requested of the parties. The parties are

¹ In a letter received on July 22, 2003, Xcel reiterated its request for simultaneous filing of closing briefs.

² Xcel proposes a 25-page limitation. BNSF submits that a 40-page limitation is more appropriate, citing Duke Energy Corp. v. Norfolk Southern Ry., STB Docket No. 42069, et al. (STB served Dec. 13, 2002).

directed to point out where in the record (by document and page number and by Bates number) the following evidence may be found:

1. (For Xcel)–The support for the number used to adjust the variable cost item, Carload Handling–Other Expense (Item 2);
2. (For Xcel)–The support for the numbers used to index the variable costs to the 1st Quarter 2003;
3. (For Xcel)–The support for the assertion that conformity with previous cases required inclusion of other, non-routine maintenance costs in the calculations, and where you show the expenses that were added to the locomotive calculation;
4. (For Xcel)–The support for the assertion that third party loading crew wage costs are included in the crew wage special study ratio that covers non-wage expenses, and specifically, where an accounting of these costs can be found within the workpapers that correspond to the ratio;
5. (For Xcel)–The sources for the assertion that Xcel Reply page II-A-116 demonstrates the inaccuracy of BNSF’s statement that “the conductor does not generally record the help on a [Train Activity Report]”;
6. (For Xcel)–The support for the statement that BNSF and the Lower Colorado River Authority (LCRA) have entered into a multi-year agreement to transport coal to the LCRA’s Seymour plant;
7. (For both parties)–The evidence that confirms that LG&E is obligated to purchase an annual minimum volume of 1 million tons of PRB coal in 2004 and 2005;
8. (For both parties)–The support for development of off-line transit and unloading times; and
9. (For Xcel)–Your evidence shows that multiple train car sets are placed at the origin mines awaiting their next load. In some cases, the train sets are forced to wait several days before loading begins. Please identify where in the record you demonstrated that the mines have the capacity to hold these train sets for extended periods.

Each party shall file 15 copies of its brief as well as 3 computer diskettes containing electronic versions of the submission in WordPerfect 10.0 format.

It is ordered:

1. Briefs not to exceed 40 pages in length are due by September 8, 2003.
2. The parties are directed to respond to the questions and provide the materials identified in this decision.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary